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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 APOLONIA PAM DOMINGO-MARCOS,)
11 ELYDA JUDITH GONZALEZ-DOMINGO,)
12 YONATAN JACOBO DOMINGO-MARCOS,) Case No.: 2:18-cv-03451-AB-KS
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Petitioners,)
v.)
JEFFERSON B. SESSIONS III,)
Respondent.)

19 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties'
20 Proposed Stipulated Protective Order ("Stipulation") filed on July 26, 2018, the terms of the
21 protective order to which the parties have agreed are adopted as a protective order of this Court
22 (which generally shall govern the pretrial phase of this action) except to the extent, as set forth
23 below, that those terms have been modified by the Court's amendment of paragraphs E(4)(6),
24 E(4)(7), E(4)(8), and G(1) of the Stipulation.

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AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND MODIFIED
BY THE COURT¹

1. The parties expect that information protected by the Privacy Act of 1974, 5 U.S.C. § 552a, as amended, will be disclosed to Petitioners in the course of discovery and produced to the Court in pleadings, motions, and other documents. Specifically, Respondent represents that it has in its possession one or more alien files (hereinafter “A-files”) of individuals who are or may be citizens or lawful permanent residents of the United States. These A-files may contain information that is discoverable in the instant litigation, but Respondent believes that the files are protected from disclosure under the Privacy Act of 1974, 5 U.S.C. § 552a, as amended. These A-files also contain personal data identifiers that are subject to redaction under Local Rule 5.2-1. Additionally, Respondent has in its possession Petitioners’ A-files, which contain identifying information, which is or may be discoverable, concerning individuals other than Petitioners. Respondent believes that this information is also protected from disclosure under the Privacy Act of 1974, 5 U.S.C. § 552a, as amended and is subject to redaction under Local Rule 5.2-1.
2. Thus, with the agreement of the parties, the Court having determined that there is good cause for issuance of a protective order pursuant to Federal Rule of Civil Procedure 26(c) to govern the disclosure, use, and handling by the parties and their respective agents, successors, personal representatives and assignees of certain information and items produced and received in discovery in the above-captioned action, IT IS HEREBY ORDERED as follows:

A. Definitions

1. “Action” shall mean the case captioned, Apolonia Pam Domingo-Marcos et al. v. Jefferson B. Sessions III, 2:18-cv-03451-AB-KS, CDCA.
2. “Confidential Information” shall mean information that, at the time of its production in

¹ The Court’s additions to the agreed terms of the Protective Order are generally indicated in bold typeface, and the Court’s deletions are indicated by lines through the text being deleted.

discovery in the action, or thereafter, is designated confidential by the Producing Party because of a good faith belief that the information: (a) is not in the public domain, or if in the public domain, is improperly in the public domain; and (b) is (i) a trade secret or other confidential research, development, or commercial information as such terms are used in Federal Rule of Civil Procedure 26(c)(1)(G), (ii) personal financial, medical or other private information relating to an individual that would properly be redacted from any public court filing pursuant to Federal Rule of Civil Procedure 5.2., or (iii) information protected by the Privacy Act of 1974, 5 U.S.C. § 552a, as amended, including, but not limited to information about an individual regarding his or her education, financial transactions, medical history, criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying articular assigned to the individual, such as a finger or voice print or photograph.

3. “Disclose” (or forms thereof) shall mean to distribute, provide, or otherwise make available for access, viewing, or copying. “Disclose” shall include the actual covered document or item as well as the contents or information contained therein, such that disclosing a copy, summary, paraphrasing, or characterization would be considered a disclosure of the document itself for purposes of this Protective Order.
4. “Document” shall mean all items listed in Federal Rule of Civil Procedure 34(a)(1)(A) & (B).
5. “Challenging Party” shall mean any party who challenges the designation of information as Confidential Information under this Protective Order.
6. “Designating Party” shall mean the party or other person producing in discovery in the Action any information that the Producing Party seeks to designate and have treated as Confidential Information pursuant to this Protective Order.
7. “Producing Party” shall mean the person or party producing in discovery in the Action.
8. “Receiving Party” shall mean any party who receives information that has been designated as Confidential Information.

B. Purpose, Scope, and Limitations of Protective Order

- 1 1. This Protective Order applies to discovery, pre-trial and (to the extent approved by the
2 Court) trial and post-trial proceedings in this action, whether the Documents are produced
3 by a party or a person or entity who is not a party to this action (a “non-party”). It is also
4 hereby ORDERED that Respondent may: (a) produce documents to Petitioners that are
5 protected by the Privacy Act of 1974, 5 U.S.C. § 552a, and Respondent’s production of
6 such documents shall be considered to be “pursuant to the order of a court of competent
7 jurisdiction” and authorized by 5 U.S.C. § 552a(b)(11) so long as Respondent designated
8 the documents as CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER and
9 (b) produce documents without redactions as required under Local Rule 5.2-1. This
10 Order binds the parties and their respective agents, successors, personal representatives,
11 and assignees.
- 12 2. Nothing in this Protective Order supersedes existing independent statutory, law
13 enforcement, national security, or regulatory obligations imposed on a Party, and this
14 Protective Order does not prohibit or absolve the parties from complying with such other
15 obligations.
- 16 3. This Protective Order shall not prejudice in any way any party’s ability to challenge the
17 use or disclosure of information other than information designated as Confidential
18 Information under this Protective Order in this Action. A party’s compliance with the
19 terms of this Protective Order shall not operate as an admission that any particular
20 material is or is not (a) confidential, (b) privileged, or (c) admissible in evidence at trial.
- 21 4. The protections conferred by this Protective Order do not cover any information (a)
22 properly in the public domain; (b) that becomes part of the public domain after its
23 disclosure to a Receiving Party as a result of publication not involving a violation of this
24 Protective Order, including becoming part of the public record in this Action through trial
25 or otherwise; or (c) known to the Receiving Party prior to the disclosure or obtained by
26 the Receiving Party after the disclosure from a source who obtained the information
27 lawfully and under no obligation of confidentiality to the Producing Party.
- 28 5. This Protective Order does not govern the use by the parties of Confidential Information

1 in open court at any hearing or trial, but the parties reserve the right to seek relief from
2 the Court in connection with the intended use of Confidential Information in any such
3 hearing or trial. Reference by the parties to confidential documents or information at
4 trial, pursuant to an order entered by the Court as described in this paragraph, shall be
5 considered to be: (a) “pursuant to the order of the court of competent jurisdiction” and
6 authorized by 5 U.S.C. § 552a(b)(11); and (b) pursuant to an order permitting disclosure
7 and filing of materials without redaction as required by Local Rule 5.2-1. *See also*
8 paragraph (E)(9) below (providing advance notice to Producing Party prior to use of
9 Confidential Information in open court or in support of a dispositive motion).

- 10 6. This Protective Order governs the disclosure, use, and handling of all Confidential
11 Information, regardless of the format or medium in which such Confidential Information
12 is generated, stored, or maintained.
- 13 7. Any Confidential Information referenced in any pleading or contained in any Document
14 filed with the Court in this Action by the Producing Party shall at the time of filing cease
15 to be Confidential Information unless the Producing Party files the un-redacted pleading
16 or Document under seal.
- 17 8. Nothing in this Protective Order shall restrict the right of any Producing Party to use its
18 own Confidential Information for any purpose whatsoever, but if any such use results in a
19 disclosure that causes the Confidential Information to lose its designation as Confidential
20 Information, then it shall no longer be subject to any protection under this Protective
21 Order.
- 22 9. This Protective Order applies only to disclosures, uses, and handling of Confidential
23 Information occurring after the entry of this Protective Order.
- 24 10. Neither the termination of this Action nor the termination of employment of any person
25 who has had access to any Confidential Information shall relieve such person of his or
26 her obligations under this Protective Order, which shall survive.
- 27 11. Any party may at any time seek modification of this Order by agreement or, failing
28 agreement, by motion to the Court.

1 C. Method for Designating Confidential Information

- 2 1. Designations of Confidential Information shall be made by the Producing Party, prior to
3 or at the time of production, except as otherwise provided by this Protective Order.
- 4 2. The Designation of Confidential Information should be limited only to those Documents
5 or portions of Documents that qualify under the appropriate standards or under the
6 definition of “Confidential Information” in Section A(2) of this Protective Order.
- 7 3. Documents produced in discovery in this Action shall be designated as containing
8 “Confidential Information.” For documents produced in paper or an electronic form that
9 allows endorsements or similar designation on the image, the designation shall appear by
10 the inclusion of the marking of Confidential, Subject to Protective Order Dkt. No. 2:18-
11 cv-03451-AB-KS, CDCA on each page of the document asserted to contain Confidential
12 Information, or on a cover sheet appended to the document. For electronic information
13 that is provided in native form or a format that is not amenable to visible endorsement on
14 the image, the file name(s) shall begin with Confidential, Subject to Protective Order Dkt.
15 No. 2:18-cv-03451-AB-KS, CDCA.¹ The media on which the Confidential Information
16 is provided (e.g., CD, DVD, external hard drive) also must be and remain plainly labeled
17 with Confidential, Subject to Protective Order Dkt. No. 2:18-cv-03451-AB-KS, CDCA
18 unless and until the protection of the data within the media is removed. Any copying or
19 transferring of electronic files that are designated as Confidential Material must be done
20 in a manner that maintains and the protection for all copies, including, but not limited to,
21 in the filename(s) and the location where the copies are stored and users’ access thereto.
- 22 4. For interrogatory answers and responses to requests for admissions, designation of
23 Confidential Information shall be made by placing within each interrogatory answer or
24 response to requests for admission asserted to contain Confidential Information the
25 following: CONFIDENTIAL pursuant to the Court’s Protective Order dated
26 MM/DD/YYYY (Doc. XX).
- 27 5. Because this case may require the use of Confidential Information in litigation,

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¹ The original metadata of the native files should be retained pursuant to the parties’ agreement.

1 deposition testimony shall automatically be deemed CONFIDENTIAL-SUBJECT TO
2 PROTECTIVE ORDER, unless the parties stipulate otherwise or the Court rules
3 otherwise in response to an appropriate motion. Documents that are designated
4 CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER, including deposition
5 transcripts and associated exhibits, may be disclosed to deponents who have been given a
6 copy of this Protective Order and have signed a declaration in the form attached hereto as
7 “Exhibit A,” in accordance with paragraph (E)(5) of this order.

- 8 6. For any other Document or item produced in discovery in this Action not falling within
9 subparagraphs C(3), (4) or (5) above, designation of Confidential Information shall be
10 made by labeling the item or the item’s container with CONFIDENTIAL, Subject to
11 Protective Order Dkt. No. 2:18-cv-03451-AB-KS, CDCA. If only a portion or portions
12 of the information contained in the item warrant protection as Confidential Information, it
13 shall be accompanied by a cover letter identifying the specific portion or portions so
14 designated.
- 15 7. If it comes to a Producing Party’s attention that information designated as Confidential
16 Information does not qualify or no longer qualifies for protection, the Producing Party
17 must promptly notify all parties that it is withdrawing the designation for the applicable
18 information.

19 D. Challenging Confidential Designations

- 20 1. A Challenging Party shall not be obliged to challenge the propriety of a Confidential
21 Information designation at the time made, and a failure to do so shall not preclude a
22 subsequent challenge thereto.
- 23 2. The Challenging Party shall initiate a challenge to the designation of any Confidential
24 Information under this Protective Order by providing to the Designating Party (a) written
25 notice of each designation it is challenging and (b) a description of the basis of each
26 challenge.
- 27 3. The Challenging Party and the Designating Party shall attempt to resolve each challenge
28 in good faith and must begin a meet and confer process within seven (7) calendar days

1 after the Designating Party receives notice from the Challenging Party. During the
2 conferring process, the Challenging Party must convey its basis for the challenge and the
3 Designating Party must have an opportunity to review the applicable documents and
4 either keep or change the designation. If the challenged designation(s) total 100 pages or
5 less, the Designating Party must communicate its decision to the Receiving Party within
6 fourteen (14) calendar days after receipt of notice of the challenge. For designation(s)
7 totaling more than 100 pages, the parties, acting in good faith, shall agree on a reasonable
8 time for the Designating Party to advise the Challenging Party of its decision.

9 4. If the Designating Party decides to withdraw its designation, it shall give notice of this
10 change to all parties.

11 5. If the Challenging and Designating Parties cannot come to a resolution within the time set
12 forth in paragraph 3 above, or as otherwise agreed, the opponent bears the burden of
13 seeking a determination from the Court.

14 6. Any information designated as Confidential Information pursuant to and after the entry
15 by the Court of this Protective Order shall be treated as Confidential Information until
16 such time as (a) the Designating Party agrees that it shall no longer be treated as
17 Confidential Information or (b) the Court rules that such information should not be
18 treated as Confidential Information.

19 E. Disclosure, Use and Handling of Confidential Information

20 1. Upon designating documents as Confidential Information, Respondent is authorized to
21 release such documents to counsel for Petitioners and the Court in this case, including
22 documents from government files which contain discoverable, unredacted third-party
23 identifying information, without obtaining written consent of the third parties whose
24 names, addresses, and other identifying information may be present in such documents.

25 2. A Receiving Party may use Confidential Information in connection with this Action only
26 for prosecuting, defending, or attempting to settle this Action, and shall disclose such
27 Confidential Information only in accordance with the terms of this Protective Order.

28 3. Counsel of record are responsible for employing reasonable measures, consistent with

1 this Protective Order, to control access to and secure distribution of Confidential
2 Information.

3 4. Confidential Information shall only be disclosed, summarized, described, characterized,
4 or otherwise communicated or made available in whole or in part to the following
5 persons:

- 6 a. Counsel (including outside counsel) for the parties, including associated personnel
7 necessary to assist counsel in this Action, such as litigation assistants, paralegals,
8 and litigation support, information technology, information or records
9 management, investigative, secretarial, or clerical personnel;
- 10 b. Current employees of the parties who are assisting with respect to this Action;
- 11 c. Any person with prior authorized access to the Confidential Information;
- 12 d. Current employees of the Producing Party;
- 13 e. Current employees of other federal agencies involved in this litigation, including,
14 but not limited to the Department of Homeland Security and the Department
15 of State;
- 16 f. Witnesses, potential witnesses, and deponents, including their counsel;
- 17 g. Court reporters and other persons not employed by this Court, retained to record
18 or transcribe testimony or argument at interviews or depositions in connection
19 with this Action;
- 20 h. Photocopying, data processing, and other support services that are reasonably
21 necessary to litigation in this Action;
- 22 i. Retained expert witnesses and consultants;
- 23 j. Mediators or arbitrators; and
- 24 k. This Court (including any judicial officer to whom this Court may refer this
25 matter for settlement purposes), jurors, and Court personnel, including persons
26 recording or transcribing testimony or argument at a conference, hearing, trial, or
27 appeal in this Action.

28 5. Disclosure to the persons referenced in subsections (E)(4)(e)-(i) above may only occur

1 after the person to whom the disclosure is being made has been given a copy of this
2 Protective Order and has signed a declaration in the form attached hereto as "Exhibit A."

- 3 6. Persons **referenced in subsections (E)(4)(a)-(i)** receiving Confidential Information
4 pursuant to the terms of this Protective Order are prohibited from disclosing it to any
5 person except in conformance with this Protective Order.
- 6 7. Unless the Designating Party gives written permission, **any Party desiring to include**
7 **any Confidential Information or Item in any papers filed with the Court shall file an**
8 **application, in accordance with the requirements of Local Rule 79-5, and provide**
9 **the requisite showing based on competent evidence of "good cause" or "compelling**
10 **reasons," for a Court order allowing such papers to be filed under seal pursuant to**
11 **Federal Rule of Civil Procedure Rule 5.2(d). All Confidential Information that is filed**
12 ~~with the Court must be (a) filed under seal or *in camera* in accordance with the Court's~~
13 ~~Local Rules and procedures, or (b) redacted from any filing that is publicly available.~~
14 However, the parties are not required to follow such filing requirements when a brief or
15 memorandum merely cites to documents marked as CONFIDENTIAL-SUBJECT TO
16 PROTECTIVE ORDER without revealing Confidential Information, or references
17 information contained within documents marked CONFIDENTIAL-SUBJECT TO
18 PROTECTIVE ORDER without revealing Confidential Information. **In addition, for**
19 **good cause, the Court may order redaction of information in filings that are publicly**
20 **available. See FED. R. CIV. P. 5.2.**
- 21 8. If a ~~Receiving~~ Party or anyone subject to this Protective Order receives a subpoena **or**
22 **court order issued in other litigation that compels disclosure of any information or**
23 **items designated** Confidential Information as ~~designated~~ in this Action, **that Party**
24 **must:**
- 25 a. **Promptly notify in writing the Designating Party. Such notification shall**
26 **include a copy of the subpoena or court order;**
- 27 b. **Promptly notify in writing the party who caused the subpoena or order to**
28 **issue in the other litigation that some or all of the material covered by the**

1 subpoena or order is subject to this Protective Order. Such notification shall
2 include a copy of this Stipulated Protective Order; and

- 3 c. Cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.

5 ~~the Receiving Party or such individual shall promptly notify the Designating Party shall~~
6 ~~not disclose any Confidential Information until the Designating Party has had a~~
7 ~~reasonable opportunity to inform the subpoenaed person either (a) the Designating Party~~
8 ~~does not object to the production of the Confidential Information or (b) that that the~~
9 ~~Designating Party will seek appropriate relief or protection from the proper Court to~~
10 ~~prevent the production.~~ The Designating Party shall bear the burden and expense of
11 seeking protection of its designated Confidential Information, and nothing in this
12 Protective Order should be construed as authorizing or encouraging a subpoenaed person
13 **subject to this Protective Order** to disobey a lawful directive from this or another court.

14 ~~9. If the need arises for any party to disclose Confidential Information in a proceeding in~~
15 ~~open Court or in support of a dispositive motion, it may do so only after giving seven (7)~~
16 ~~days' notice to the producing party who, after a good faith effort to meet and confer, may~~
17 ~~seek additional relief from the Court.~~

18 F. Inadvertent Production of Confidential Information

- 19 1. Nothing herein shall be deemed or construed as a waiver of any applicable privilege,
20 right of privacy, or proprietary interest with respect to any information or item. The
21 parties agree to follow Federal Rule of Civil Procedure 26(b)(5)(B) with respect to any
22 inadvertently or unintentionally produced or disclosed Confidential Information.
- 23 2. If a Receiving Party learns that, by inadvertence or otherwise, it, or a person to whom it
24 has disclosed Confidential Information in accordance with this Protective Order, has
25 disclosed Confidential Information to any person or in any circumstance not authorized
26 under this Protective Order, the Receiving Party shall, upon learning of the unauthorized
27 disclosure: (a) promptly notify the person(s) to whom the unauthorized disclosure was
28 made that the unauthorized disclosure contains Confidential Information subject to this

1 Protective Order; (b) promptly make all reasonable efforts to obtain the return of the
2 Confidential Information and to prevent further unauthorized disclosures of the
3 Confidential Information, including requesting the person who received the unauthorized
4 disclosure to agree to be bound by the terms of this Protective Order by executing a
5 declaration in the form attached as “Exhibit A”; and (c) within five (5) calendar days
6 notify the Producing Party and all other parties of the identity of the person(s) to whom
7 the unauthorized disclosure was made, the circumstances surrounding the disclosure, and
8 the steps taken to prevent any use or further disclosure of the Confidential Information
9 that was the subject of the unauthorized disclosure.

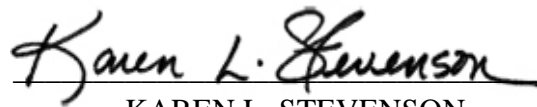
10 G. Disposition of Documents Containing Confidential Information

- 11 1. Except as provided in this Protective Order, within 90 days of the final termination of this
12 Action, and termination of case No. 17-71611, **Apolonia Domingo-Marcos et al v.**
13 **Jefferson Sessions III**, in the United States Court of Appeals for the Ninth Circuit,
14 whether by settlement, judgment, or other disposition or conclusion and all appeals or
15 opportunities to appeal therefrom, a Receiving Party shall take reasonable steps either to
16 (a) destroy or delete all items designated as Confidential Information or (b) return them to
17 the Designating Party, depending upon the Designating Party’s stated reasonable
18 preference, except materials that exist on back-up tapes or similar systems. Materials that
19 exist on back-up tapes, systems, or similar storage need not be immediately deleted or
20 destroyed, and, instead, such materials overwritten and destroyed in the normal course of
21 business. Until they are overwritten in the normal course of business, the Receiving
22 Party will take reasonable steps to limit access, if any, to the persons necessary to
23 conduct routine information technology and cybersecurity functions. In the course of
24 disposing of information in its possession under this paragraph, the Receiving Party also
25 will take reasonable steps to notify persons to whom it distributed Confidential
26 Information pursuant to this Order that such information should be returned to Receiving
27 Party or destroyed by the person possessing the information with written confirmation to
28 Receiving Party.

- 1 a. For material that contains or reflects Confidential Information, but that constitutes
2 or reflects counsel's work product, or that of retained consultants and experts,
3 counsel of record for the parties shall be entitled to retain such work product in
4 their files in accordance with the provisions of this Protective Order, so long as it
5 is and remains clearly marked to reflect that it contains Confidential Information
6 subject to this Protective Order.
- 7 b. Counsel of record for the parties shall also be entitled to retain an archival copy of
8 all pleadings; affidavits; motion papers; trial, deposition and hearing transcripts;
9 legal memoranda; correspondence; deposition and trial exhibits; expert reports;
10 briefs; other papers filed with the Court; and any other parts of the trial record,
11 even if such material contains Confidential Information, so long as such material
12 is and remains clearly marked to reflect that it contains Confidential Information.
13 Even after the final disposition of this and any related Actions, the terms of this
14 Protective Order shall continue to govern the disclosure, use, and handling of any
15 Confidential Information unless and until its Designating Party agrees otherwise
16 in writing or a court order directs.
- 17 c. In particular, attorneys for the United States may maintain copies of any
18 documents designated Confidential in their case file for this case, and may
19 maintain copies of any notes or summaries containing such Confidential material
20 in their case file for this case, subject to 44 U.S.C. § 3101, *et seq.*, and 5 U.S.C.
21 § 552, *et seq.*

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23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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25 Dated: July 27, 2018

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27 KAREN L. STEVENSON
28 UNITED STATES MAGISTRATE JUDGE

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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 APOLONIA PAM DOMINGO-MARCOS,)
10 ELYDA JUDITH GONZALEZ-DOMINGO,)
11 YONATAN JACOBO DOMINGO-MARCOS,)

12 Petitioners,)

Case No.: 2:18-cv-03451-AB-KS

13 v.)

14 JEFFERSON B. SESSIONS III,)

15 Respondent.)
16 _____)
17

18 **EXHIBIT A**

- 19 1. My name is _____
- 20 2. I have read the Protective Order that has been entered in this case, and a copy of it has
21 been given to me. I understand the provisions of the Protective Order, and agree to
22 comply with and to be bound by its provisions. I also consent to the jurisdiction of this
23 Court for purposes of enforcement of the Protective Order.
- 24 3. I declare under penalty of perjury that the foregoing is true and correct.

25 Executed this ____ day of _____ by _____
26 (Print Name)

27 Signed _____
28